

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

UNITED STATES OF AMERICA,

*Plaintiff,*

V.

FISHER INDUSTRIES, FISHER SAND  
AND GRAVEL CO., TGR CONSTRUCTION,  
INC., AND NEUHAUS & SONS, LLC,

*Defendants.*

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CASE NO. 7:19-CV-403

**AGREED MOTION FOR CONTINUANCE AND ENTRY OF AMENDED  
TEMPORARY RESTRAINING ORDER**

Plaintiff United States of America and Defendants Fisher Industries, Fisher Sand and Gravel Co., TGR Construction, Inc. (collectively “Fisher Defendants”) and Neuhaus and Sons, LLC file this agreed motion to continue the status conference and preliminary injunction hearing currently set for Thursday, December 19, 2019 at 1:30 p.m. and further, request that the Court enter the Agreed Amended Temporary Restraining Order attached as Exhibit 1 and would show the Court the following:

1. The United States filed its Complaint for Injunctive Relief (Docket No. 1) as well as Plaintiff's Emergency Motion for Temporary Restraining Order and Preliminary Injunction (Docket No. 5) on December 5, 2019.

2. The Court held a hearing on December 5, 2019 and after hearing arguments from the parties, entered a Temporary Restraining Order (Docket No. 7).

3. On December 12, 2019, the Court held a status conference and after hearing argument from the parties, instructed the parties to file an agreed amended temporary

restraining order. The parties were unable to agree to the language in an amended temporary restraining order and accordingly, the United States filed its Opposed Motion for Entry of Amended Temporary Restraining Order on December 13, 2019 (Docket No. 16).

4. On December 16, 2019, the United States filed its First Amended Complaint for Injunctive Relief adding Defendant TGR Construction, Inc. as a defendant in the case (Docket No. 17).

5. On December 16, 2019, the Court entered an Order Setting Hearing on Temporary Restraining Order (Docket No. 18) and an Order Setting Hearing on Preliminary Injunction (Docket No. 19) setting both hearings for December 16, 2019 at 1:30 p.m.

6. On Friday, December 13, 2019, the United States made the LiDAR information required by the Fisher Defendants available through an FTP (share) site but the Fisher Defendants were unable to successfully download and use the information from the site. The United States also informed the Fisher Defendants on December 13, 2019 that the required LiDAR information is available on the United States Geological Services website. Further, the United States downloaded the LiDAR information onto a hard drive and shipped the hard drive to the Fisher Defendants via Federal Express on December 16, 2019 for delivery on December 17, 2019. Due to unforeseen weather issues, Federal Express was unable to deliver the hard drive to the Fisher Defendants on December 17, 2019. Based on the current Federal Express tracking application, it appears the hard drive will be delivered to the Fisher Defendants today, December 18, 2019.

7. Counsel for the United States and counsel for the Fisher Defendants have continued to confer regarding the issues in this cause. The Fisher Defendants have told the United States that they will cease construction operations on the Neuhaus & Sons, LLC

property that is the subject of this suit for the Christmas and New Year holiday season at 5:00 p.m. on December 19, 2019, with the exception of seeding and watering the graded portions of the banks of the Rio Grande River. The Fisher Defendants have further told the United States that aside from seeding and watering the graded banks of the Rio Grande River, they do not intend to begin construction activities on the Neuhaus & Sons, LLC property that is the subject of this suit, until January 4, 2019.

WHEREFORE, the United States, the Fisher Defendants and Neuhaus & Sons, Inc. request that the Court continue the hearing on temporary restraining order and hearing on preliminary injunction until January 3, 2020 at a time to be set by the Court and enter the Agreed Amended Temporary Restraining Order attached as Exhibit 1.

**CERTIFICATE OF CONFERENCE**

Undersigned counsel for the United States has conferred with Mark Courtois, counsel for the Fisher Defendants and the Fisher Defendants agree with this motion and the entry of the Agreed Amended Temporary Restraining Order attached as Exhibit 1.

Undersigned counsel for the United States has conferred with Lance Kirby, counsel for Neuhaus & Sons, LLC and Neuhaus & Sons, LLC agree with this motion and the entry of the Agreed Amended Temporary Restraining Order attached as Exhibit 1.

Respectfully submitted,

**RYAN K. PATRICK**  
United States Attorney  
Southern District of Texas  
**DANIEL DAVID HU**  
Chief, Civil Division

BY: *s/ E. Paxton Warner*  
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Attorney for the United States of America

**AGREED AS TO FORM AND SUBSTANCE:**

*s/ Mark Courtois* by permission  
Attorney in Charge for the Fisher Defendants

*s/ Lance Kirby* by permission  
Attorney in Charge for Neuhaus & Sons, LLC

**CERTIFICATE OF SERVICE**

I, E. Paxton Warner, do hereby certify that on December 18, 2019, a copy of the foregoing was served via email to the following:

Mark Courtois  
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Attorney for the Fisher Defendants

Lance Kirby  
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Attorney for Neuhaus & Sons, LLC

By: *s/ E. Paxton Warner*  
**E. PAXTON WARNER**  
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